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MAY 25 2012

HON. JAMES L. ROBERT

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASTE ACTION PROJECT, a Washington  
non-profit corporation,

Plaintiff,

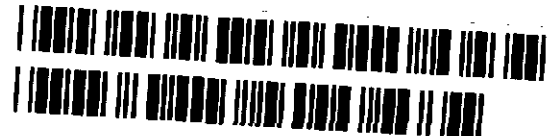
v.

MELTEC, DIVISION OF YOUNG  
CORPORATION, a Washington corporation,

Defendant.

Case No. 11-01432JLR

CONSENT DECREE



11-CV-01432-CNST

I. STIPULATIONS

Plaintiff Waste Action Project sent a sixty day notice of intent to sue letter to Defendant Meltec, Division of Young Corporation ("Meltec") on June 29, 2011 and a supplemental notice of intent to sue on July 6, 2011, both alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Meltec's Facility in Seattle, Washington and seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs.

Meltec denies any fault, wrongdoing, or liability regarding all claims and alleged violations.

Waste Action Project and Meltec agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate

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SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

1 means of resolving this action.

2 Waste Action Project and Meltec stipulate to the entry of this Consent Decree without  
3 trial, adjudication, or admission of any issues of fact or law regarding Waste Action Project's  
4 claims or allegations set forth in its complaint, sixty-day notice and supplemental sixty-day  
5 notice.

6 DATED this 2 day of April, 2012.

7 ELLIS, LI & MCKINSTRY PLLC

SMITH & LOWNEY PLLC

9 By s/ Keith A. Kemper

By s/ Richard A. Smith

10 Keith A. Kemper WSBA #19438  
11 Attorneys for Defendant  
Meltec, Division of Young Corp.

Richard A. Smith, WSBA #21788  
Attorneys for Plaintiff  
Waste Action Project

12 MELTEC, DIVISION OF YOUNG CORP.

WASTE ACTION PROJECT

14 By

Mark Lindberg  
Mark Lindberg  
President, Young Corp.

By

Greg Wingard  
Greg Wingard  
Title: Executive Director

## 17 II. ORDER AND DECREE

18 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.  
19 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,  
20 ADJUDGES, and DECREES as follows:

- 21 1. This court has jurisdiction over the parties and subject matter of this action.
- 22 2. Each signator for the parties certifies for that party that he or she is authorized to  
23 enter into the agreements set forth below.
- 24 3. This Consent Decree applies to and binds the parties and their successors and  
25 assigns.
- 26 4. This Consent Decree applies to the operation, oversight, or both by Defendant

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Seattle, Washington 98112  
(206) 860-2883

1 Meltec, Division of Young Corporation ("Meltec") of its Facility at 3444 13th Avenue South,  
2 Seattle, Washington (the "*Facility*").

3 5. This Consent Decree is a full and complete settlement of the claims in the  
4 complaint and all other claims known and unknown existing as of the date of entry of this  
5 Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,  
6 arising from operations of the Facility. These claims are released and dismissed with prejudice.  
7 Enforcement of this decree is Waste Action Project's exclusive remedy for any violation of its  
8 terms.

9 6. This Consent Decree is a settlement of disputed facts and law. It is not an  
10 admission or adjudication regarding any allegations by Waste Action Project in this case or of any  
11 fact or conclusion of law related to those allegations. It is not evidence of any wrongdoing or  
12 misconduct on the part of Meltec.

13 7. Meltec agrees to the following terms and conditions in full and complete  
14 satisfaction of the claims covered by this decree:

15 a. Meltec will comply fully with all conditions of its National Pollutant  
16 Discharge Elimination System Permit No. WAR000639 (the "*NPDES permit*") and any  
17 successor, modified, or replacement permit;

18 b. By the date of entry of this Consent Decree, Meltec will replace the catch  
19 basin filter inserts and oil absorbent booms in each of the seven storm drains at the  
20 Facility with new filter inserts and oil absorbent booms, and will amend its SWPPP to  
21 provide for inspection, maintenance and replacement of filter inserts and oil absorbent  
22 booms at the seven storm drains consistent with manufacturer instructions, with  
23 replacement to occur no less frequently than quarterly.

24 c. By the date of entry of this Consent Decree, Meltec will begin monitoring  
25 stormwater discharges from catch basin six, in addition to catch basin seven, in  
26 accordance with the NPDES permit sampling and reporting provisions. Meltec will

1 continue monitoring discharges from catch basin six and catch basin seven unless and  
2 until Meltec consolidates all of its discharges off site into one discharge point and  
3 monitoring location.

4 d. Meltec will sweep paved surfaces at the facility with a vacuum sweeper  
5 designed to capture particles four microns wide and larger at least two times per month.

6 e. Not later than March 30 2012, Meltec will submit a written stormwater  
7 treatment conceptual plan to Waste Action Project.

8 1) The stormwater treatment conceptual plan will describe a treatment  
9 best management practice(s) designed and recommended by Meltec's qualified  
10 stormwater consultant to reduce the levels of zinc, copper, and turbidity in the  
11 Facility's stormwater discharges to the NPDES permit benchmarks and reduce the  
12 level of fecal coliform in the Facility's stormwater discharges to the NPDES  
13 permit effluent limit.

14 2) The conceptual plan will include the earliest practicable date by  
15 which Meltec can implement the proposed measures, which will not be later than  
16 September 30, 2012.

17 3) Meltec will pay Waste Action Project's reasonable expert fees and  
18 costs of up to \$1,000.00 (ONE THOUSAND DOLLARS) to review Meltec's  
19 conceptual plan. Waste Action Project will review and either approve or provide  
20 comments on the proposal within 30 days of receipt. To facilitate review by Waste  
21 Action Project's expert, Meltec will provide reasonable access to the facility and  
22 information requested by Waste Action Project's expert.

23 4) If Waste Action Project approves Meltec's conceptual plan, Meltec  
24 will implement the proposed best management practice(s) by the date identified in  
25 its conceptual plan, or September 30, 2012, whichever is earlier. If Waste Action  
26 Project does not approve Meltec's proposal, Meltec will make a good faith effort

1 to modify its proposal to respond to Waste Action Project's comments and  
2 resubmit the proposal to Waste Action Project within 45 days of receipt of these  
3 comments for another round of review by Waste Action Project. Waste Action  
4 Project will not unreasonably withhold approval.

5 f. Meltec will forward copies of all written or electronic communications  
6 between it and Ecology concerning its compliance with the NPDES permit and the Clean  
7 Water Act, including but not limited to discharge monitoring reports to Waste Action  
8 Project on or before the NPDES permit's quarterly due dates for discharge monitoring  
9 reports. This obligation will continue through the termination date of this Consent Decree.

10 8. Not later than 30 days after the entry of this Consent Decree, Meltec will pay  
11 \$22,000.00 (TWENTY TWO THOUSAND DOLLARS) to the I'M A PAL Foundation for the  
12 Hamm Creek habitat restoration project described in Attachment A. Payment shall be sent to:  
13 I'M A PAL Foundation, 742 S. Southern St., Seattle, WA 98108. Payment shall include the  
14 following reference in a cover letter or on the check: "Consent Decree, WAP v. Meltec" A copy  
15 of each check and cover letter, if any, shall be sent simultaneously to: Greg Wingard, Waste  
16 Action Project, P.O. Box 4832, Seattle, WA 98104.

17 9. Meltec will pay Waste Action Project's reasonable attorney and expert fees and  
18 costs in the amount of \$11,000.00 (ELEVEN THOUSAND DOLLARS). Payment will be made  
19 within 30 days of the entry of this decree by check payable and mailed to Smith & Lowney,  
20 PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard A. Smith. This payment is full and  
21 complete satisfaction of any claims Waste Action Project may have under the Clean Water Act  
22 for fees and costs.

23 10. Upon entry of this Decree, the parties will jointly move for dismissal of PCHB No.  
24 11-140.

25 11. A force majeure event is any event outside the reasonable control of Meltec that  
26 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.

1 Delay in performance of a task required by this decree caused by a force majeure event is not a  
2 failure to comply with the terms of this decree, provided that Meltec notifies Waste Action  
3 Project of the event; the steps that Meltec will take to perform the task; the projected time that  
4 will be needed to complete the task; and the measures that have been taken or will be taken to  
5 prevent or minimize any impacts to stormwater quality resulting from delay in completing the  
6 task.

7 Meltec will notify Waste Action Project of the occurrence of a force majeure event as  
8 soon as reasonably possible but, in any case, no later than fifteen days after the occurrence of the  
9 event. In such event, the time for performance of the task will be extended for a reasonable  
10 period of time following the force majeure event.

11 By way of example and not limitation, force majeure events include

- 12 a. Acts of God, war, insurrection, or civil disturbance;
- 13 b. Earthquakes, landslides, fire, floods;
- 14 c. Actions or inactions of third parties over which defendant has no control;
- 15 d. Unusually adverse weather conditions;
- 16 e. Restraint by court order or order of public authority;
- 17 f. Strikes; and
- 18 g. Litigation, arbitration, or mediation that causes delay.

19 12. This court retains jurisdiction over this matter. And, while this decree remains in  
20 force, this case may be reopened without filing fee so that the parties may apply to the Court for  
21 any further order that may be necessary to enforce compliance with this decree or to resolve any  
22 dispute regarding the terms or conditions of this decree. In the event of a dispute regarding  
23 implementation of, or compliance with, this decree, the parties must first attempt to resolve the  
24 dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute.  
25 Such a meeting should be held as soon as practical but must be held within 30 days after notice of  
26 a request for such a meeting to the other party and its counsel of record. If no resolution is

1 reached at that meeting either party may file a motion with this court to resolve the dispute.

2 13. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent  
3 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior  
4 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney  
5 General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent  
6 Decree by the parties, Waste Action Project shall serve copies of it upon the Administration of the  
7 U.S. EPA and the Attorney General.

8 14. This Consent Decree takes effect upon entry by the court. It terminates three years  
9 after that date.

10 15. Both parties have participated in drafting this decree.

11 16. This Consent Decree may be modified only upon the approval of the court.

12 17. If for any reason the court should decline to approve this Consent Decree in the  
13 form presented, this Consent Decree is voidable at the discretion of either party. The parties  
14 agree to continue negotiations in good faith in an attempt to cure any objection raised by the court  
15 to entry of this Consent Decree.

16 18. Notifications required by this Consent Decree must be in writing. The sending  
17 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or  
18 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally  
19 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other  
20 communication regarding this decree to be valid, it must be delivered to the receiving party at the  
21 one or more addresses listed below or to any other address designated by the receiving party in a  
22 notice in accordance with this paragraph 17.

23 **if to WAP:**

24 Waste Action Project  
25 P.O. Box 4832  
26 Seattle, WA 98104  
email: [gwingard@earthlink.net](mailto:gwingard@earthlink.net)





1  
2 ELLIS, LI & MCKINSTRY PLLC

SMITH & LOWNEY PLLC

3 By s/ Keith A. Kemper

By s/ Richard A. Smith

4 Keith A. Kemper, WSBA #19438

Richard A. Smith, WSBA #21788

5 Attorneys for Defendant

Attorneys for Plaintiff

Meltec, Division of Young Corporation

Waste Action Project

**I'M A PAL FOUNDATION**

**International Marine Association Protecting Aquatic Life**  
742 S. Southern St.  
Seattle, WA. 98108  
206-762-3640

March 26, 2012

**RE: Waste Action Project – Hamm Creek Habitat Restoration Project, Seattle**

**To Whom It May Concern:**

I'M A PAL foundation is a grass roots environmental organization dedicated to protect, defend, and preserve our creeks, streams, rivers, watersheds, and their ecosystems. We are a 501(c)(3) organization. The restoration project we propose for the \$22,000 MELTAC settlement money would take place along Hamm Creek in south Seattle. A majority of it on a parcel of land along Hamm Creek we call Point Rediscovery. Hamm Creek runs through this property, on its way to the Duwamish.

Funding would be used to enhance a degraded portion of this natural area. Includes obtaining permits, contracting a local Veteran owned company for labor, machinery for sediment removal & disposal, removal of invasive plants, planting, garbage removal, and native plant plantings and other restoration activities. All money received as part of this settlement will be used for this contract and materials and other costs directly related to this restoration project. No money will be spent for political lobbying activities,

This project will benefit the water quality of the creek, river and the wildlife in and around Hamm Creek. Working with the Vets, we plan to have this completed within one to two years of receiving the final payment.

I'M A PAL will report the completion of the project & money spent, back to Waste Action Project.

If you need more information, please feel free to contact me.

Respectfully,

Liana Beal



**I'M A PAL**  
**Vice President**  
206-913-3626 cell

**SMITH & LOWNEY, P.L.L.C.**

2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883, FAX (206) 860-4187

April 2, 2012

Docket Clerk for Judge Robart

Re: Waste Action Project v. Meltec, Division of Young Corp., W.D. Wash. No. 11-cv-1432; Waiting period before entry of consent decree

Dear Docket Clerk:

This is submitted with the proposed Consent Decree and Joint Motion for Entry of Consent Decree for the above-captioned case. Please note that, pursuant to the explicit direction of the Clean Water Act, the Consent Decree should not be entered by the Court until a 45-day Department of Justice and EPA review period has expired. Thus, the hearing is noted for May 25, 2012. Please do not have this Consent Decree entered before that time. Please call if you have any question about this. Thank you.

Very truly yours,

SMITH & LOWNEY, P.L.L.C.

By: s/Richard A. Smith  
Richard A. Smith